

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ARNOLD M. GUTIERREZ and WILLIAM K. WITTENBROOK

Appeal No. 2006-1050
Application No. 09/852,831

MAILED

APR 28 2006

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

ON BRIEF

Before CRAWFORD, LEVY and NAPPI, **Administrative Patent Judges**.

NAPPI, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 1 through 26. For the reasons stated *infra* we will not sustain the examiner's rejection of claims 1 through 26.

THE INVENTION

The invention relates to a network auction site wherein the seller can set a reserve price. If the reserve price is not met during an initial auction period the auction period may be extended if the seller has authorized auction period extensions. See pages 2 and 4 of appellants' specification.

Claim 1 is representative of the invention and is reproduced below:

1. A method for conducting an auction at an auction server for an item offered for sale, said method comprising:
 - enabling a seller to designate a predetermined reserve price for said item;
 - enabling bidders to be connected to said auction server through an interconnection network;
 - receiving price bids from said bidders for said item during an auction period;
 - determining that none of said price bids is equal to or greater than said predetermined reserve price during said auction period;
 - determining that an extension of said auction period was authorized by a seller of said item if none of said bid price bids was equal to or greater than said predetermined reserve price; and
 - automatically extending said auction period if said extension of said auction period was authorized.

THE REFERENCE

The reference relied upon by the examiner is:

Alaia

6,230,147

May 8, 2001

THE REJECTION AT ISSUE

Claims 1 through 26 stand rejected under 35 U.S.C. § 103(a) as being obvious over Alaia. The examiner's rejection is set forth on pages 4 and 5 of the answer. Throughout the opinion, we make reference to the brief and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

With full consideration being given to the subject matter on appeal, the examiner's rejection and the arguments of appellants and the examiner, for the reasons stated *infra* we will not sustain the examiner's rejection of claims 1 through 26 under 35 U.S.C. § 103(a).

Appellants argue on page 6 of the brief, that Alaia teaches a buyer offered auction not a seller offered auction such as claimed and that the dynamics of each type auction are different. Appellants assert that the break in Alaia's auction brought about by the "pending" status does not meet the appellants' invention which enables uninterrupted bidding of an item in order to obtain a bid

that is greater than or equal to a predetermined reserve price. On page 7 of the brief, appellants assert Alaia does not teach or suggest anything that might arguably correspond to a predetermined reserve price. Finally, appellants argue that Alaia does not teach or suggest enabling a seller to designate a reserve price, determining that none of the bids is equal to or greater than the reserve price, determining that an extension of the auction is authorized and automatically extending the auction.

In response the examiner asserts, on page 6 of the answer, that the dynamics of the two auctions are the same. Further, on page 7 of the answer the examiner states:

Alaia teaches two non-related features. The first is "Flexible Overtime" starting on column 13; line 25. The second is "Pending Status" starting on column 16; lines 42. Examiner notes that Alaia teaches that an auction can have Flexible Overtime without requiring a Pending Status. Examiner specifically references column 14; lines 31-59 which teaches several implementations of Flexible Overtime. None of the implementations require setting the status of an auction to "pending."

In response to appellants' arguments that Alaia contains no teaching or suggestion of anything corresponding to a reserve price, the examiner states:

Alaia column 4; lines 4-7 states that "When a bidder submits a bid, that bid is sent to the server component and evaluated to determine whether the bid is from an authorized bidder, and whether the bid has exceeded a pre-determined maximum acceptable price." Examiner once again notes that the "pre-determined maximum acceptable price" is the exact definition of a reserve price.

Finally, the examiner, citing column 13, lines 61, 62; column 14, lines 27 through 30, asserts that overtime is triggered by a parameter or criteria that would somehow be advantageous to the buyer and as such if no bid greater than equal

to the reserve price is received it is in the interest of the buyer to extend the auction.

While we concur with the examiner that the dynamics of the two auctions are similar and that Alaia teaches a concept similar to the reserve price, we do not find that Alaia teaches or suggests that the auction period should be extended, go into overtime, if there is no bid equal to or greater than the reserve price.

Alaia teaches an electronic auction system. Alaia states that there are three models for online procurement catalog, buyer bidding auction and seller bidding auction. See column 1, lines 24, 25. In a seller bidding auction buyers want to save money, and sellers downwardly bid to achieve the lowest price. Alaia is primarily concerned with a seller downward bid auction. See column 2, lines 17 through 22. Alaia is also applicable to an upward bid auction, buyer bid auction. See column 27, lines 60 through 64. Further, Alaia teaches that in both buyer and seller auctions there are bid limitations on price, if these limitations are not met the bid will not be accepted, i.e. if the bid is below (seller auction) or higher (buyer auction) the bid will not be accepted. Alaia teaches that the auction may go into overtime where bids will be accepted past the scheduled closing time of the auction. See column 13, lines 26 through 39. Alaia teaches that overtime is triggered when lower bids submitted are within a predetermined time of the closing of the auction. Thus overtime allows other bidders to see and

meet the bid. See column 6, line 62 through column 7, line 18, and column 13, line 53 though column 14, and line 22.

Claim 1 recites "determining that none of said price bids is equal to or greater than said predetermined reserve price during said auction period; determining that an extension of said auction period was authorized by a seller of said item if none of said bid price bids was equal to or greater than said predetermined reserve price; and automatically extending said auction period if said extension of said auction period was authorized." Independent claims 14 and 26 contain similar limitations. Appellants' specification on pages 5 and 6, define the reserve price as "a price below which the seller has no obligation to sell the item being auctioned." We concur with the examiner that Alaia's bid limitations meet the claimed reserve price and that overtime meets the claimed extension of the auction period. However, we do not find that Alaia teaches or suggests that not receiving a bid that is equal to or greater then the reserve price triggers overtime. While Alaia states that overtime is used is if there is any indication that further bidding is advantageous to the buyer in a downward bidding auction or seller in an upward bidding auction, we find no teaching that the overtime is triggered by comparison of the bids to a seller defined criteria, such as the reserve price. In Alaia the bids are compared to each other. Further, while Alaia does teach bid limitations which we consider to be an analog to the reserve price, Alaia teaches that bids, which do not meet the limitations, are rejected. See column 20 lines 59, 60. Thus, we find no teaching or

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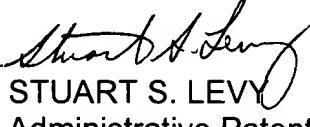
suggestion in Alaia that the auction should be extended if no bids which are equal to or greater than the reserve price are received.

In summary, we will not sustain the examiner's rejection of claims 1 through 26 under 35 U.S.C. § 103(a). The decision of the examiner is reversed.

REVERSED



MURRIEL E. CRAWFORD
Administrative Patent Judge



STUART S. LEVY
Administrative Patent Judge



ROBERT E. NAPPI
Administrative Patent Judge

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